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CURRENT TOPICS

Lord Maenan

SIR HARTLEY SHAWCROSS paid a remarkable tribute to LORD MAENAN (Sir W. Francis Kyffin Taylor) when he moved the second reading in the Commons, on 7th December, of the Railway and Canal Commission (Abolition) Bill. That Bill proposes to abolish a court which has fallen into disuse and to transfer most of its functions to the High Court in England and the Court of Session in Scotland. Sir Hartley said: "I doubt whether there has ever been a greater judge or one who has been held in higher esteem and greater affection. On the Northern Circuit we looked upon him as a master of the law, a high ornament of the bench and a guide, philosopher and friend to all of us. . . I am proud to have the opportunity of paying tribute to one who, when he left the judicial bench, apart from this Commission, at the remarkable age of ninety-four, still possessed qualities of mind and heart which must be envied by most other holders of judicial office much younger in years than is Lord Maenan." The profession will be glad to hear that the Bill provides for some measure of compensation for the loss of office by one who, despite a lifetime of public service, would not otherwise be entitled to a pension. The good wishes of all follow this grand old man of the legal profession into his retirement.

Salaries in Local Government

IN view of recent encouragement by The Law Society to organisations seeking the improvement of salaries in local government offices, it is interesting to learn that both at Wakefield and at Bradford the town councils are experiencing difficulties because of officials leaving for higher paid jobs. At Wakefield, Alderman CARR, as chairman of the general purposes committee, sought the council's sanction of the committee's decision to increase the salary of twenty-eight senior officials, mainly in the town clerk's and city treasurer's departments. At Bradford, on the following day (8th December), the city treasurer, Mr. B. R. SINKINSON, said that bartering of salaries must cease and a solution must be sought on a national level, through the Association of Municipal Corporations. The salaries given by local authorities, he said, do not compare with those offered by regional boards and hospital management committees. It will be remembered that at the first annual meeting of the Local Government Legal Society, held in The Law Society's Hall on 9th October, 1948 (*ante*, p. 662), Mr. W. J. TAYLOR, a member of the Council and Chairman of the Salaried Solicitors' Committee of The Law Society, mentioned that The Law Society were spending much time and money on their work for salaried solicitors, and urged all local government solicitors to support The Law Society by being members, and thus bring their efforts to a successful conclusion. So far as salaried solicitors are concerned, it is The Law Society which can achieve what has been suggested should be the aim of national organisations of other local government officers.

Finance Act, 1948, Pt. IV: Expenses Allowances and Benefits in Kind

COMPLETE notes have been issued by the Board of Inland Revenue on the effect of Pt. IV of the Finance Act, 1948, with regard to expenses allowances and benefits in kind paid to or provided for directors or employees of business concerns. The Part comprises ss. 38 to 46 of the 1948 Act, which came into operation as from 6th April, 1948. With certain exceptions such payments, and the value of such benefits, are to be treated as remuneration of the director or employee and charged to tax under Sched. E, subject to any deduction that may be due under r. 9 of Sched. E for expenses incurred "wholly, exclusively and necessarily in the performance of the duties" of the office or employment. The notes explain generally who are affected, what payments and benefits are affected, what are the exceptions for particular benefits, the general exceptions for expenses payments or benefits which would be fully covered by a deduction for expenses, the valuation of benefits in kind, and the position under P.A.Y.E. A circular letter is obtainable from inspectors of taxes and is being sent to employers and companies, dealing with the application of P.A.Y.E.

Undischarged Bankrupts

THE disquiet shown by Members of Parliament on hearing the statement by the President of the Board of Trade in the Commons, on 22nd November, that there are 60,000 undischarged bankrupts in the country, will be shared by the legal profession. It would be ludicrous to expect solicitors to make inquiries about a client's record before arranging his mortgages, or other transactions involving the obtaining of credit. The risk of a solicitor incurring odium through a client's lapse in this respect, it is apparent from the figures, is not negligible, and should be diminished. Two possible checks have been suggested. The first is that undischarged bankrupts should be required to report periodically. The President of the Board of Trade promised to look into the possibility of amending the law in this respect. Another check might be the prohibition of a change of name by an undischarged bankrupt. A further check in doubtful cases

is inspection of the central register of undischarged bankrupts at Bankruptcy Buildings. In the meantime ordinary members of the public will have to go without any protection other than that afforded by the voluntary trade protection societies.

Town and Country Planning Act, 1947, s. 79: Claims for Abortive Expenditure

ATTENTION is drawn to the fact that claims for abortive expenditure under s. 79 of the Town and Country Planning Act, 1947, in the cases to which that section applies, cannot be made except where the application for planning permission, the refusal, or grant subject to conditions, of which is the basis of the claim, is made not later than the 31st of this month.

Single House Plots

THE Central Land Board have issued a short leaflet—"House 2"—explaining the conditions under which people who bought plots of land before 1st July this year to build themselves houses can have their development charge set off against their claim against the £300 million fund. The leaflet states that a person is eligible who (*a*) owned or leased (or had contracted to buy or lease) a piece of land on 1st July, 1948; and (*b*) starts to build a *house* on that land, for occupation by himself, before the 7th January, 1952. The arrangements apply to one house only for any owner during the period. (The Board will also consider cases on their merits where the house is built for the personal occupation of a member of the *immediate* family of the owner.) Such a person will be entitled to a payment from the £300 million fund not less than the development value in his land for the erection of a house; and will be allowed to set off development charge against this payment from the fund. He will be asked to undertake that his claim shall become a security for the development charge. The effect of these arrangements is that *no cash payment* will be required by the Board at any time, unless market values rise between 1947 and the time when the house is erected. (Claims are assessed on values existing in 1947, development charges on values existing when the house is to be erected.) The leaflet adds that it is an essential condition that a claim on the £300 million fund must be made on form S.1 to the Central Land Board before building starts, and in any case before the 31st March, 1949. If this claim is not made, charge will be payable. Copies of "House 2" are available at the Board's Regional Offices.

Land Registry to go to Durham

ONLY a week ago Mr. JANNER raised in the House of Commons the question of the intended move of the Estate Duty Office to Worthing. On Tuesday, 14th December, he questioned the Chancellor of the Exchequer on a matter of still closer concern to solicitors, namely, the decision, now unhappily final, to remove the Land Registry to Durham. This removal will undoubtedly increase the difficulties of solicitors transacting business with the Registry. The profession will find it hard to agree with Sir STAFFORD CRIPPS "that in all but very few cases business with the Land Registry can best be transacted by correspondence." The statement that it is hoped that "for the few cases where oral discussion is necessary" an appropriate officer at the Registry may attend in London will not go far towards allaying the natural anxieties of solicitors. It is much to be regretted that the advice of The Law Society in this matter has not been taken and that it is now, apparently, too late for the decision to be altered.

Literature and the Law

LT.-COL. ELLIOTT, Member of Parliament for the Scottish Universities, referred to Sir Walter Scott and Robert Louis Stevenson as great Scotsmen learned in the law, when the second reading of the Administration of Justice (Scotland) Bill was moved in the Commons on 2nd December. The main purpose of the Bill is to permit, if necessary, an increase from thirteen to a maximum of fifteen in the number of judges in the Court of Session and the High Court of Justiciary in Scotland. One of the interesting subsidiary matters for which the Bill provides is a transfer to the court of the Crown's present function of appointing from the existing judges the Lord Ordinary in Exchequer Causes. Lt.-Col. Elliott mentioned Scott's "Guy Mannering" as one of the greatest legal novels and Stevenson's "Kidnapped" and "Catriona" as having been based on the Appin murder. English lawyers can compete with their colleagues over the border in literary achievement, Sir W. S. Gilbert and Sir ALAN P. HERBERT among humorists, Samuel Warren (of "Ten Thousand a Year" fame) and Henry Fielding among novelists. Lord Bacon and Selden, in philosophy and *belles lettres*, help to make us proud of our profession as well as of our literary heritage. Let us not forget, however, that it was a great Scottish lawyer, James Boswell, who gave us our best picture of Dr. Samuel Johnson, himself not unlearned in the law, even if we recall that the Doctor composed some of Mr. Boswell's best forensic efforts.

Vacations

"IF all the year were playing holidays," said Prince Henry after Falstaff and Poins had made their exits, "to sport would be as tedious as to work." All work, on the other hand, is as bad for the lawyer as it is for Jack or anyone else, and holidays, it is hoped, will always be given and taken. In these hard times there are many who would have us forgo part of our holidays to devote more time to the greater cause of increased production. A member of the Blackpool and Fylde District Law Society, discussing Whitsuntide holidays at the Society's annual meeting, on 27th October, suggested that the week's holiday at Whitsun was a Victorian idea. "To-day," he said, "the legal profession is definitely a public service and solicitors' offices cannot these days be closed for so long." Another member considered that office boys have come to regard this week's holiday as an ancestral right, and he said that once when it was suggested that it should be cut, they were on the verge of a strike. Presumably the argument was that in the present shortage of office boys it is wise to defer to their demands. Nevertheless the vote to reduce the holiday to three days was carried by eighteen votes to seventeen.

Recent Decisions

In *Chenard and Company, and Others* v. *Joachim Arissol*, on 30th November (*The Times*, 1st December), the Judicial Committee of the Privy Council (LORD SIMONDS, LORD UTHWATT, LORD MORTON OF HENRYTON, and LORD REID) held that s. 192 (1) of the Seychelles Penal Code, 1904, conferred on a member of the Legislative Council immunity from prosecution or action for defamation for anything which he said or wrote in the Council in his capacity as a member.

In *Hunt* v. *Morgan*, on 1st December (*The Times*, 2nd December), a Divisional Court of the King's Bench Division held, in a case stated by the County of London Quarter Sessions, that a taxi-cab driver committed no offence under the London Hackney Carriage Act, 1853, if he refused to stop when hailed, and that he could only be required to accept anyone who chose to hire him when he was on a rank or was stationary in a street. See also p. 721, *post*.

In *London Transport Executive* v. *Upson*, on 9th December (*The Times*, 10th December), the House of Lords (LORD PORTER, LORD WRIGHT, LORD UTHWATT, LORD DU PARCQ and LORD MORTON OF HENRYTON) held that the words "unless he could see that there was no foot passenger thereon" in reg. 3 of the Pedestrian Crossing Places (Traffic) Regulations, 1941, did not connote that a driver must so see up till the very moment the driver reached the studs, but meant that he must so see at a reasonable distance from the studs, and in the circumstances the driver was guilty of a breach of the regulations because he would have had a clear view of the crossing at a reasonable distance from it if his view had not been obscured by a taxicab. Their lordships further held that reg. 5, which gives foot-passengers free and uninterrupted passage at a controlled crossing where they have started to cross before the signal is given to vehicular traffic to cross, did not override reg. 3.

GRATUITOUS PAYMENT BY TRUSTEES

IT is a commonplace that, as the Trustee Act, 1925, s. 30 (2), declares, trustees may reimburse themselves or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts and powers. The obvious corollary of this rule is that they will not be allowed expenses which are not properly so incurred, and this description will clearly include any voluntary subscriptions or gifts made without authority of the trust instrument, unless they can be justified as reasonable expenditure for the benefit or protection of the trust property or, in certain cases, of the beneficiaries. It may occasionally be possible to justify a voluntary subscription on the ground that it is "paid to buy off a bigger payment," as Kekewich, J., put it in *How* v. *Earl Winterton* [1902] W.N. 230, where he allowed in the accounts of a trustee of rents and profits of land a subscription paid to a church school on the view that failure to maintain the school would result in the establishment of a school board in the district, levying rates of a larger amount. The court may also sometimes approve of subscriptions being paid to local charities on a relatively modest scale as part of a scheme for the maintenance of an infant entitled to an estate in land, as in *Re Walker* [1901] 1 Ch. 879, where Farwell, J., indicated at p. 887 that this had been allowed in many cases of large estates on the principle of "keeping up the reputation of the family and estate." But these decisions, which appear to be the only two of their kind readily discoverable, involved no important departure in principle, and related only to payments out of the income of landed estates.

That the merits of a deserving object, or even a moral obligation of a testator, afford no lawful excuse for a trustee making gifts of trust moneys, is a proposition which hardly needs authority to support it. Thus an executor may not pay a debt in respect of which the Statute of Frauds can be pleaded, as it was held in *Re Rownson* (1885), 29 Ch. D. 358, and this decision was treated by Fry, L.J., at p. 364, as an application of the general rule that "it is a *devastavit* if an executor or administrator pay that which need not be paid." There is indeed one exception to this principle in the rule that an executor may generally pay a debt in respect of which he could plead the Statute of Limitations; but this was regarded both in *Re Rownson* and in *Re Midgley* [1893] 3 Ch. 282 as an anomalous exception not to be extended. It was therefore held in *Re Midgley* that if one executor had successfully pleaded the Statute of Limitations in an action of debt against the estate, it was not lawful for his co-executor to pay the debt.

Generally the lack of power to make voluntary gifts or subscriptions out of trust moneys is so clear that it does not cause much difficulty to trustees. But they are sometimes placed in an embarrassing position when asked as holders of shares in companies to concur in payments to directors as compensation for loss of office or in other gratuitous payments to directors or servants of the company.

When, as fairly often happens, a proposal for such payments is made at the stage of winding up, it is clear from such well-known decisions as that in *Hutton* v. *West Cork Railway Co.* (1883), 23 Ch. D. 654, that no majority of shareholders can bind the minority, or the creditors of the company, in voting for the proposal, which at this stage is *ultra vires*. (It does not seem likely that this position has been altered by the new s. 191 of the Companies Act, 1948.) Each shareholder has thus complete discretion to concur in or dissent from such a proposed payment, and if made it will virtually consist of voluntary subscriptions by concurring members, paid by way of deduction from their shares of the assets. There seems to be no ground for suggesting that trustees have any more power to concur in gratuitous payments to company officers in these circumstances, than they have to make direct voluntary gifts of trust property. No prospect of benefit to the trust could be alleged as justification for assenting to such a proposal when made in liquidation (except perhaps if this is merely for the purpose of reconstruction). Benefit to the trust could only come through benefit to the company in which the trust holds shares, and the main ground of decision in *Hutton* v. *West Cork Railway Co.*, *supra*, and similar cases was that a company which is no longer a going concern is incapable of benefiting from gratuities to its officers. When there is strong moral justification for gratuitous payments in winding up trustees are thus faced with the awkward alternatives of acting strictly, refusing concurrence and appearing mean, or of committing a breach of trust, unless they can obtain a satisfactory indemnity from their beneficiaries.

While a company is still a going concern the question of gratuitous payments to its officers wears a different aspect for trustee shareholders. No problem will arise for them where their consent is not required, as in the case of reasonable gratuities or pensions to servants other than directors, which may be validly granted by the directors under the articles or under the general law as being for the benefit of the company and reasonably incidental to its business —cf. *Re Lee, Behrens & Co.* [1932] 2 Ch. 46, at p. 51. Gratuities to directors themselves will, however, require the sanction of a general meeting (*Re George Newman & Co.* [1895] 1 Ch. 674) and the same will apply in the case of payments to directors by way of compensation for loss of office or as consideration for retirement, as is now recognised by s. 191 of the Companies Act, 1948. Here the problem of trustee shareholders will vary greatly with the proportion of share capital and voting power vested in them and the relative size of the payments proposed. Where their share of capital is small, little responsibility will fall upon them and of course they can be bound by a majority, unlike the case of a company in liquidation. Where they have a large or controlling interest, they will be more directly responsible to their beneficiaries for the depletion of the company's assets by the proposed payments, if they assent. Even here they are not necessarily bound to dissent, as they generally are when the company is in liquidation. If the payments are reasonable in amount and can be shown to be for the company's benefit, they may be justifiable as beneficial to the trust also. But if the trustees feel any doubt on the latter point and the amount of the proposed payments is relatively large, they may be well advised to seek the directions of the court.

Payments to directors as compensation for loss of office, etc., involve rather special considerations when made incidentally to the transfer of the company's undertaking. Section 192 of the Companies Act, 1948 (replacing s. 150 (1) (2) of the Companies Act, 1929), recognises the validity of payments of this kind in connection with such a transfer if particulars thereof have been disclosed to the members and the proposal approved by the company. The transfer may be for a consideration which is beneficial to the shareholders, and may be a step towards liquidation which will result in beneficial realisation of the trustees' holding. If the trustees consider the scheme for transfer or sale of the undertaking to be favourable to the trust in this way, and the proposal for payment to directors is reasonable in itself and an integral part of the scheme as a whole, there seems to be no reason why they should not accept it for the purpose of securing an overall benefit to the trust.

The position will be similar in cases where compensation payments to directors are proposed in connection with an offer to purchase all or part of the shares of the company made by some person or corporation with the object of acquiring a controlling interest or a certain proportion of the shares. The payments will, of course, normally be made by the purchaser direct, and shareholders will not be called upon to approve them expressly if particulars of the proposed compensation have been circulated with the offer to purchase the shares, as required by s. 193 (1) of the Companies Act, 1948 (replacing s. 150 (3) of the 1929 Act). The main problem for trustee shareholders as for others will then be simply whether

the price offered for the shares is attractive. If they consider that this is so, and that it is desirable in the circumstances to realise the shares, it seems that there is no ground for their objecting to reasonable compensation being paid to the directors as part of the same bargain. Their position will naturally be more difficult if the directors have failed to secure that particulars of the compensation are circulated with the offer to purchase the shares, with the result that its payment can only be validated by the approval of a meeting of the shareholders or the class of shareholders concerned, under s. 193 (3); but this should be an exceptional case.

The problems of trustee shareholders in relation to compensation to directors are thus often easier when this forms part of a proposed scheme for the sale of a company's undertaking or of its shares, than when it is first proposed after the business has been sold or at the stage of liquidation, and assent thereto can no longer be shown to produce any benefit for the trust.

H. B. W.

Divorce Law and Practice

THE PUBLICATION OF BANNS AND NULLITY

CASES in which it is contended that a marriage is null and void on the ground that there has been no due publication of the banns are not frequently before the courts, and for that reason a certain number of the authorities on that branch of the law are somewhat ancient. Before the Marriage Act, 1823, if parties married without due publication of the banns, then the marriage was null and void notwithstanding the fact that one or both parties were unaware of the irregularity or were wholly innocent of any intent to deceive. This gave rise to a number of cases of considerable hardship, in particular *R.* v. *Inhabitants of Tibshelf* (1830), 1 B. & Ad. 190, where a woman named Mary Hodgkinson was called White in the publication of her banns in 1817. The name White had been entered by mistake in the register of her baptism, but she had never used or been known by the name. The false name was given to the officiating clergyman without any intention to deceive and nobody interested was in fact deceived. It was held that the marriage was void. Cases such as this resulted in the law being modified by statute when the Marriage Act was passed, and s. 22 of that Act now lays down that a marriage shall be "null and void to all intents and purposes whatsoever" if the parties "shall knowingly and wilfully intermarry without due publication of banns." The addition of the words "knowingly and wilfully" clearly brings in an element of intention which was not previously required and shows that at about this time the law was changing from the view that a marriage was only valid if carried out strictly according to the letter of the law as regards form and procedure before and after the marriage to the more liberal view that a union which had existed in fact over a number of years should not be open to challenge on a mere technicality. This view has, of course, now become of universal application, and nowadays judges are, not unnaturally, somewhat loath to grant a decree of nullity on this ground unless there are clear indications of fraud or intention to deceive. That this is so is shown by the decisions of Ormerod, J., in the recent case of *Dancer* v. *Dancer* (1948), 92 SOL. J. 528, and of Henn Collins, J., in the earlier case of *Chipchase* v. *Chipchase* [1942] P. 37, where the learned judge himself expressed regret at being bound to grant a decree of nullity as the statute had been infringed.

The relevant facts as found by the judge in *Dancer* v. *Dancer*, *supra*, were these: A wife who was the legitimate daughter of Mr. and Mrs. Knight was christened Jessamine Knight and registered in that name. When she was three years old her mother began to live with a man called Roberts and in fact continued to do so until he died fourteen years later. The wife was brought up as the child of Mr. and Mrs. Roberts and was always known by the surname Roberts and was not told her real name until she was sixteen. Before her marriage she told her intended husband her real name and it was agreed, on the advice of the vicar, that the banns should be published in the name of Roberts, as that was the name by which she was known, and to use any other name would be to mislead the public who knew her as to who it was that was being married. On these facts Ormerod, J., had to decide whether there had been a breach of the terms of the Marriage Act, quoted above, sufficient to render the marriage null and void. A further point arose under s. 7 of the Marriage Act, which lays down that before the banns are published the parties shall cause to be delivered to the parson their true Christian names and surnames and certain other particulars. It was contended for the husband that the true name of the wife was the name she was given by reason of her birth and parentage and in which she was registered, and that as in this case that was not the name in which the banns had been published, it followed that there could have been no due publication of the banns within s. 22 of the Act. The learned judge did not, however, accept the husband's contention. The reasons for this decision were based on his views of two distinct matters, first, with regard to the intention that is required to be shown to bring the case within s. 22 of the Act, and secondly, with regard to what is the true name of a person living under an assumed name in circumstances such as these. With regard to the question of intention, the learned judge adopted the views expressed by Sir Boyd Merriman, P., in the case of *Chipchase* v. *Chipchase* [1939] P. 391 (this was an appeal before the Divisional Court from a magistrate's order and was between the same parties as the case already mentioned and took place some two years prior to that case). In that case the learned President said that with regard to the intentions of the parties "it is necessary first to prove that there has been a fraud, and secondly that both parties were cognisant of the fraud and knowingly and wilfully entered into the marriage without due publication of the banns." Now it is a fundamental quality of fraud that there should be an intention to deceive, and it follows from the above *dictum* that an intention to deceive must therefore be proved against the parties. In the case we are considering, *Dancer* v. *Dancer*, Ormerod, J., came to the conclusion that the wife, in giving the vicar the name of Roberts by which she had been known for nearly all her life, did so with the object not of deceiving anyone, but rather for precisely the opposite reason, to ensure that the people who would hear the banns read and who would be affected by her act would not be deceived. If she had allowed the name of Knight to be published, then nobody would have known who it was who was getting married, for they all knew her as Roberts. Thus, as the learned judge held there was no intention to deceive, he was bound to hold that there was no such fraud as sufficed to bring the case within the terms of the *dictum* quoted above. It is important to observe that the judge distinguished this case from all the cases that were cited by the husband in support of his case on this very ground, for, as the judge pointed out, in all those cases there was an intention to deceive someone; in *Small* v. *Small* (1923), 67 SOL. J. 277, the wrong name was given in order to hide the fact that the husband was a deserter from the Army; in *Wormald* v. *Wormald* (1868), 19 L.T. 93, the false name was given deliberately in order that the girl who was going to be married could conceal the fact that she was going to be married; and in *Chipchase* v. *Chipchase* [1942] P. 37, when that case came before Henn Collins, J., he found that the wife gave her maiden name, although she had been previously married, in order to hide the fact that she had been so married. It is perhaps worth noticing, too, that in all these cases the deception was as to something other than the parentage of the person giving the false name, whereas in *Dancer's* case the giving of the wrong name (assuming that this was done) did in fact deceive those hearing the banns

read as to the parentage of the wife, even though it may be that there was no fraud.

As was said, however, above, the judge decided this case on two points and the decision upon the second point appears to make the first reason given above fall into the category of *obiter dicta*, for the second reason was sufficient in itself to decide the case. The second reason for the view taken by Ormerod, J., was that he considered that the " true " surname of the wife was not Knight, which name she would in the ordinary way have taken at her birth from her parents, but was Roberts. The question turned upon the meaning of " true " in s. 7 of the Marriage Act, referred to above. In this case it was abundantly clear from all the evidence that the wife never intended, apart from marriage, to be known by any name other than Roberts, the name she had used ever since she could remember, and by which name she had been known at school and everywhere else. In these circumstances, the judge felt himself in accord with Sir William Scott, who, in dealing with the question of the true names of illegitimate children and in particular the question of the possibility of acquiring a name by repute, said in *Sullivan* v. *Sullivan* (1818), 2 Hag. Con. 238, " however, if they are much tossed about in the world, in a great variety of obscure fortunes, as such persons frequently are, it may be difficult to say for certain what name they have permanently acquired . . . In general it may be said that where there is a name of baptism and a native surname these are the true names unless they have been overridden by the use of other names assumed and generally accredited." Here, Ormerod, J., considered that the native surname had been overridden by the name which had been assumed and with which the wife had been generally accredited.

To sum up, this case is valuable because it throws light on the question of what constitutes the due publication of banns, but what was said on that subject was only *obiter*; while it is an authority for showing that a person born legitimately may acquire a different name from that of his or her parents and in which he or she was originally registered by adopting and being generally accredited with another name over a long period.

P. W. M.

Company Law and Practice

THE NAME OF THE COMPANY—II

DISPENSING WITH THE WORD " LIMITED "

UNDER s. 19 of the Companies Act, 1948 (s. 18 of the Companies Act, 1929, as amended by s. 79 of the Companies Act, 1947), an association about to be formed as a limited company for the purpose of promoting commerce, art, science, religion, charity or any other useful object, which intends to apply its profits (if any) or other income to promoting its objects and to prohibit the division of any such profit amongst its members, may, if it obtains the licence of the Board of Trade, be registered under the Companies Act, 1948, as a company with limited liability but without the addition of the word " Limited " to its name.

Until 1st December, 1947, it was not possible for an existing limited company to change its name so as to dispense with the word " Limited " from its name, but this can now be done. " Change of name " will be dealt with in the next article.

The whole purpose of providing for the word " Limited " as the last word of the name of a limited company, coupled with the provisions of the Act as to the publication of the name of the company, is to ensure that all persons having business dealings with the company shall have notice of the fact that the liability of the members is limited. Obviously, therefore, the Board of Trade will not lightly grant a licence to dispense with the word " Limited " and the mere fact that an association comes within the terms of s. 19 is no indication that a licence will be granted. As a general rule a licence will not be granted to an association which has not some basis of national or general public interest, nor will it be granted if the objects of the association are of a controversial nature.

It is unlikely that a licence will be granted unless the association is able to show by its past results and history that it has established itself as capable of carrying out the objects for which it was formed. As we shall see, the Board of Trade will require information to satisfy themselves that this position is in fact fully established.

As the general public will have no notice of the fact that the liability of the members is limited, it is obviously essential that the financial position of the association should be thoroughly sound. Unless the financial position is secure there is no likelihood at all of a licence being granted. The Board of Trade not only require information as to the assets and liabilities, and profits or losses, of the association during previous years but also an estimate of the future position. The above is one good ground for saying that the ability to change the name of a company after formation so as to dispense with the word " Limited " is of real value. Many an association which is about to embark upon a project of greater scope and greater financial obligations than in the past feels it necessary to become registered with limited liability as a safeguard to its members against the failure of the project; the reason for registration clearly makes it impossible, however, to apply successfully for a licence under s. 19, since the financial position is not secure. In the future all that need be done is to register in the first instance in the normal way and, if the project is successfully carried through and the financial position satisfactorily secured, to apply then for a licence.

The memorandum and articles of association of the proposed new company have to be settled on behalf of the Board of Trade by counsel. Once approved no alteration can be made in the articles without prior submission to, and approval by, the Board of Trade, and provision to this effect is required to be inserted in the memorandum so that an alteration not so submitted and approved will be *ultra vires* and of no effect.

An alteration of the memorandum of association with regard to the objects of the company may, at any time, be made, but as a matter of practice this should not be done without the approval of the Board of Trade. In the event of any such alteration, the Board of Trade may, if they think fit, alter or add to the conditions and regulations upon which the licence was originally granted; in the alternative, the Board of Trade may decide to exercise their power to revoke the licence.

The provisions of the memorandum of association as to " the prohibition of dividends, bonuses, etc.," and " alterations to the articles of association," represent conditions upon which the licence is granted by the Board of Trade. Clearly, therefore, no alteration should be made in these provisions without the express approval of the Board of Trade.

Not only is it forbidden to make any distribution by way of dividend, etc., among the members, but it is also necessary to include in the memorandum of association a provision to the effect that upon winding-up any surplus shall be given or transferred to an association which has similar objects and which prohibits the distribution of its income and property to at least as great an extent as the company or, if and so far as no effect can be given to this, then to some charitable object.

It is necessary to insert a provision in the memorandum of association permitting any member (subject to such reasonable restrictions as to the time and manner of inspection as may be imposed in accordance with the regulations of the company) to inspect the accounts at any time.

There are few special requirements as to the contents of the articles of association, although in the normal way these are required to be full in detail and to cover all the points normally dealt with in articles. It is thought that the Board of Trade will accept an article providing for regulation by bye-laws so long as the articles adequately secure all rights and requirements of major importance; probably it will be a condition of the licence in such a case that copies of all bye-laws and amendments from time to time made shall be supplied to the Board of Trade.

An association already in existence and wishing to apply for registration under the Act and for a licence under s. 19 should make a written application to the Board of Trade and should enclose with the application :—

(*a*) A draft in duplicate (printed or typed with a wide margin on foolscap sized paper) of the proposed memorandum and articles of association.

(*b*) A list of the promoters and proposed governing body.

(*c*) Copies of the accounts and balance sheets for the last two years.

(*d*) Copies of any reports as to the working of the association during the last two years.

(*e*) A statement showing in detail the assets (with estimated values) and liabilities to be taken over by the proposed new company.

(*f*) An estimate of the future income (with the sources from which it will be derived) and expenditure, if such income and expenditure is likely to vary materially from the income and expenditure shown in the accounts submitted.

(*g*) A statement giving an outline of the work done and in contemplation.

(*h*) A statement as to the special grounds upon which the application is based.

(*i*) A cheque for £7 12s. payable to "The Principal Accountant, Finance Division, Board of Trade."

As stated above it is most unlikely that a licence, dispensing with the word "Limited," would be granted *ab initio* to an association about to be formed and seeking registration unless there are exceptional reasons for so doing. In any such case the information referred to above would have to be supplied so far as available.

If the Board of Trade are satisfied that the application may be entertained they will have the memorandum and articles settled by counsel on their behalf. The amount of £7 12s. referred to above is in respect of counsel's fee, and no other fees or charges are payable to the Board of Trade. The Board of Trade do not, of course, accept any responsibility for the memorandum and articles being properly framed as regards the interests of the association.

After settlement of the draft memorandum and articles the Board of Trade will furnish a notice of the application to be inserted in a local newspaper for the information of the public. If, after the expiration of a limited time, there appears to be no sufficient reason why the licence should not be granted, the Board of Trade will accept the settled memorandum and articles (with such amendments as counsel may have advised) and grant a licence.

In addition to permitting the registration of the new company by a name omitting the word "Limited," the licence also exempts the new company from the provisions of the Act relating to the publishing of its name and the sending of lists of members to the Registrar of Companies.

The licence may at any time be revoked by the Board of Trade and this power is likely to be exercised if the company departs substantially from its main objects, or if the financial position of the company ceases to be secure, or if the company fail to supply to the Board of Trade all information from time to time requested. Before a licence is revoked the Board of Trade must give notice to the company of their intention to revoke its licence and must afford the company an opportunity of being heard in opposition to the revocation. If a licence granted under s. 19 to a company whose name contains the words "Chamber of Commerce" is revoked, the company must, within six weeks (or such longer period as the Board of Trade may allow), change its name to a name which does not contain those words.

J. W. M.

A Conveyancer's Diary

REPAIRS TO TRUST PROPERTY

AMONG the countless wills that I have examined which have conferred a life interest in real property I have hardly ever come across an express provision for meeting the cost of repairs. How inconvenient it may be to leave this matter to the general law will be seen from the two following propositions.

(1) A tenant for life under the Settled Land Act, 1925, is bound to keep down the cost of ordinary repairs, however substantial they may be, out of his own pocket.

(2) The powers of trustees for sale in this respect, except during a minority, being expressed by reference to the powers of a tenant for life and trustees under the Settled Land Act, are no more extensive. If the property yields a profit while subject to a trust for sale, the rents and profits may be used to meet the cost of repairs (Law of Property Act, 1925, s. 28 (2)), but the provision is of no assistance in the common case where the property is occupied, under the terms of the trust, by one of the beneficiaries.

The incidence of a liability to repair is often of great importance where the means of the principal beneficiary are limited, even in normal times. At the present time the burden can be overwhelming. A great deal of house property has been neglected, through force of circumstances, during the war years. War-damage payments have not always been sufficient to put property into a thoroughly satisfactory state, and one defect may well lead to another. And lastly, the cost of adequate repairs is nowadays often prohibitive.

Sympathetic trustees with other capital resources under their control are sometimes tempted to take advantage of the powers to make improvements conferred by the Settled Land Act, 1925, and to stretch those powers so as to cover some, at any rate, of the repairs which in the absence of express provision should fall on the tenant for life, but there is very little that can be done in this direction. The list of authorised improvements (and an extraordinarily mixed bag it is) is contained in Sched. III to the Act, and the list is sub-divided into Parts according as the cost of the improvement in question is not required to be replaced by instalments, or may, or should, be required to be so replaced. Paragraphs (i) and (xix) of Pt. I of the Schedule may, in certain cases, help where the desired repairs include repairs to the drainage system of a house, and para. (xiv) may similarly cover repairs to a water system; but repairs to the fabric are in general completely outside the Schedule, and this is the type of repair of the greatest general importance. Dry rot is specifically provided for by para. (iv) of Pt. II, which gives the trustees a discretion whether to require the cost of improvements listed in that Part of the Schedule to be replaced by instalments or not.

But even if repairs to trust property can somehow be brought within the four corners of the list of improvements authorised by the Act, the only money which can be expended on them is capital money within the strict definition of that expression contained in the Settled Land Act, 1925. That definition does not cover any capital sum or fund, such as may sometimes be loosely referred to as capital money. A not uncommon form of will confers a life interest in the house inhabited by the testator upon his widow, in such terms as to constitute the widow a tenant for life under the Settled Land Act, 1925, and then directs that the remainder of the testator's property should be held upon the usual trusts for conversion and

investment and upon further trusts to pay the income of the trust fund so arising to the widow for life, with remainder to issue. From the fact that a will in this form is so often executed, it is apparent that testators cannot be brought to see its inconvenience; but inconvenient it is, for its effect is to set up two independent series of trusts. There is a settlement under the Settled Land Act, 1925, of the house during the widow's lifetime, and a trust for sale of the residue, and the trustees have a dual capacity while both settlement and trust continue to subsist.

Now in a case such as this there is no capital money in the hands of the trustees to expend on improvements; there is only a fund of personalty held on trust for sale. The only connection between the settlement and the trust is the fact (which must be regarded as purely fortuitous from this point of view) that the trustees and the beneficiary are the same persons. There is nothing in this circumstance nor in the provisions of s. 28 of the Law of Property Act, 1925, which, in my view, would justify the trustees of the will in treating the personalty fund as if it were capital money *stricto sensu*, and so expending it, or any part of it, on improvements in purported exercise of the powers conferred upon them, via s. 28 (1) of the Law of Property Act, 1925, by s. 84 of the Settled Land Act, 1925. The result is that if repairs to the house subject to the settlement become necessary, the life beneficiary must pay for them out of his or her own pocket, unless on an application to the court it is possible to bring some of the repairs within the category of permanent improvements of the trust property on the principle stated in *Re Smith* [1930] 1 Ch. 88. In that case, Maugham, J. (as he then was), held that the legislation of 1925 had not deprived the court of its inherent jurisdiction to decide that expenditure on certain repairs should be borne by capital, but in order to bring a repair into this class it is necessary to show that it is permanent, and also that it is a substantial improvement of the property in the broad sense of that term. This jurisdiction is, therefore, clearly limited, and in any case it carries with it the disadvantage of an application to the court in every case. *Re Smith, supra,* is a case to bear in mind in advising trustees, but the existence of the jurisdiction should never be regarded as a substitute for the express provision which I would advise every testator or settlor to make when he confers a life interest in a house on a beneficiary whose means are not likely to be large.

Circumstances will differ so widely that any form which may be suggested for an express provision of this kind will usually require a good deal of modification; but perhaps the following form will be of some assistance:—

> "The trustees may in their absolute discretion raise out of the capital of the trust fund any sum not exceeding £—— in any one year and apply the same in or towards payment for any works (excluding decorative repairs) necessary or proper for keeping [the premises hereinbefore referred to] in good and substantial repair."

"A B C"

A QUESTION OF CAPACITY

"I FEEL the force of your remarks," said the Lord Chancellor in *Iolanthe*, "but I am here in two capacities, and they clash, my lord, they clash!" The painful dilemma in which his lordship found himself placed has probably occurred but seldom in English legal history, but it was none the less painful for that:

> "The feelings of a Lord Chancellor who is in love with a ward of court are not to be envied. What is his position? Can he give his own consent to his own marriage with his own ward? Can he marry his own ward without his own consent? And, if he marries his own ward without his own consent, can he commit himself for contempt of his own court? And, if he commit himself for contempt of his own court, can he appear by counsel before himself, to move for arrest of his own judgment? Ah, my lords! it is indeed painful to have to sit upon a woolsack which is stuffed with such thorns as these!"

It was this dilemma which caused the sympathetic Lord Tolloller to exclaim:

> "This is what it is to have two capacities! Let us be thankful that we are persons of no capacity whatever."

Every lawyer knows that a clash of two capacities in one person is of fairly common occurrence in connection with those relationships which the law regards as fiduciary—such, for example, as trustee-beneficiary, director-shareholder, and the like. A conflict between duty and interest, or between two incongruous duties, is both legally and psychologically hard to resolve; it is also true to say that every individual will endeavour to solve such a problem in his own characteristic way.

Something of the same embarrassment as was felt by W. S. Gilbert's Lord Chancellor must have been experienced at times by M. Pierre Houdart, who, as a recent news item informs us, combined his official duties as police commissioner for the Parisian suburb of St. Cloud with other, but far from subsidiary, activities as leader of a gang of car thieves. This able man, however, appears to have overcome the difficulties of his position in an adroit and satisfactory manner. Having, in his second capacity, organised a large-scale theft of valuable motor cars, and passed them to his confederates on the distributing side, he would then, in his official capacity of police commissioner, collect from the victims detailed descriptions of the missing cars. Armed with this information he would then instruct his confederates exactly how to camouflage the stolen cars for resale. One cannot but admire the methodical efficiency of such a system, now temporarily out of action during the unavoidable absence of the prime mover from the scene for the next five years; but it may well be asked whether M. Houdart would have won more sympathy if he had applied the curtain principle, or the equitable rules relating to fiduciary relationships, to his two fields of activity, not allowing his left hand to know what his right hand was doing.

Robert Louis Stevenson, in "The Strange Case of Dr. Jekyll and Mr. Hyde," was shocking the Victorians, with his demonstration of the conflicting potentialities latent in every human being, at about the same time as W. S. Gilbert was tickling their sense of humour with a representation of the type of situation that has come to bear his name. The reason for success in both cases is not far to seek. Paradox has appealed to human nature from the earliest times, and the juxtaposition of the incongruous is the principal element which appeals to our sense of humour. That psychopathology should now be familiarising the public with the horrible word *schizophrenia* is a matter only for regret.

M. Houdart's proper place is not in the Chamber of Horrors with Jekyll and Hyde, but in the Savoyard Museum with the Lord Chancellor of *Iolanthe*, Pooh Bah of *The Mikado*, and the bold, bad Baron of *Ruddigore*, who became a Methodist parson—each of them, like Frederic of *The Pirates of Penzance*, the Slave of Duty—or rather Duties—multiple, conflicting and complex.

A. L. P.

OBITUARY

MR. W. E. G. JONES

Mr. William Edward Glyn Jones, solicitor, of Bristol, died at Bristol, aged sixty-two.

MR. A. E. T. JOURDAIN

Mr. A. E. T. Jourdain, solicitor, of Lincoln, died on 4th December, aged eighty-three. He had been registrar to the Bishop of Lincoln for forty-one years, and was also registrar to the Archdeacons of Lincoln, Stow and Lindsey. Since 1925 he had been legal secretary to the Bishop of Lincoln. He was admitted in 1888.

MR. G. E. FERGUSSON

Mr. George E. Fergusson, solicitor, of Dewsbury, died on 11th December, aged forty-nine. Since 1937 he had acted as Clerk to the Dewsbury magistrates. He was admitted in 1924.

MR. J. H. MILNER

Mr. James Henry Milner, solicitor, of Leeds, died on 10th December, aged eighty-five. Mr. Milner, father of the Deputy Speaker of the House of Commons, was Leeds City Coroner from 1930 to 1946.

THE LEGAL AID AND ADVICE SCHEME

A Lecture by T. G. Lund, Esq., C.B.E., Secretary to The Law Society

AT The Law Society's Hall on Wednesday, 8th December, 1948, the Secretary of The Law Society delivered the first of two similar lectures on the new Legal Aid and Advice Scheme. The lecturer was introduced by Mr. S. C. T. LITTLEWOOD, who said that the Bill to carry out the Rushcliffe recommendations had been presented to Parliament and was expected to receive its Second Reading next week [i.e., on 15th December]. The scheme should be in operation by 1st January, 1950.

Under the Bill, Parliament proposed to impose a great trust in the profession and to give them quite a lot of responsibility. Speaking for the Council, and, he hoped, for those present, he could say that they were very proud indeed of the fact that Parliament was likely to see fit to impose such trust in them. They wanted the thing to work, and to work well; and if it was to work well, they must have the help of everyone—every member of the Society, and, he supposed, all those who were foolish enough not to be members.

The first thing, of course, was for them to know all about it and there was no one better fitted to impart that knowledge than their Secretary, Mr. LUND. The Bill was founded upon the Report of the Rushcliffe Committee, who, in respect of civil, but not of criminal, cases adopted almost entirely the scheme put forward by The Law Society. That scheme, in the first place, was prepared entirely by Mr. Lund; it was his own idea, and he did it unaided. The Council, and the Legal Aid Committee of the Council over which he (Mr. Littlewood) had the honour to preside, of course went through it with care, but the scheme that Parliament was about to adopt was Mr. Lund's scheme—so there could be no one better fitted to propound it. He also invited questions at the end of the lecture.

Mr. LUND said: Unlike the Chairman who has been kind enough to introduce me to-night, I have come here expecting that every person in this room would not have read the Bill, and I most certainly hope that there is at least one who has not, because I believe that it is best when considering a scheme to begin right at the beginning and to appreciate what are the basic principles behind it.

I am speaking, as you may observe, from the Outlines on the Legal Aid and Advice Scheme; that is because the Bill, the Legal Aid and Advice Bill, is what is called in modern parlance "streamlined legislation," and the scheme is partly only in the Bill; it is, or will be, partly in Regulations to be made by the Lord Chancellor; and partly in a document which will be called the "Scheme," to be drawn by The Law Society under the powers contained in the Bill.

BASIC PRINCIPLES

The basic principles underlying the scheme are: (1) That no person ought to be deprived of legal advice, or, if necessary, legal representation before any court in the country, by reason only of lack of means; (2) that those who can afford to pay nothing should receive their legal aid free; but that those who can afford to contribute something towards their own costs should contribute what they can afford; (3) that the legal service should be provided by the legal profession, who should receive fair and reasonable remuneration for their services; (4) that the administration of the scheme should not be by a department of State or a local authority but should be by the profession itself, acting through The Law Society and responsible to the Lord Chancellor as the head of the legal profession; and that (5) in so far as it is not found from other sources, the costs should be borne by the State.

DEVELOPMENT OF EXISTING SCHEMES

The idea underlying this scheme is, in accordance with the good old English custom, that of developing existing institutions. The scheme is really in three parts. The first part is legal aid in the civil courts: For that purpose, the idea of the Poor Persons' procedure was used; but (1) instead of restricting, as in the past, the procedure to the Supreme Court only, it is proposed that there should be legal aid certificates—civil aid certificates, as they will be called—in all courts in the country; (2) instead of limiting the help which is given under Poor Persons' procedure to those with incomes not exceeding four pounds a week it is proposed substantially to raise the income limits; (3) instead of every one getting their legal representation free of cost to themselves, except for disbursements, they will, as I have said, contribute according to their means; or, if they cannot afford anything, will get even the disbursements paid for them at the expense of the State; and (4) instead of the profession not only doing the Poor Persons' work voluntarily, gratuitously, and in fact at personal expense to themselves, the profession will be reasonably and fairly remunerated for what they do.

The second part is the criminal side—i.e., aid in the criminal courts—it is proposed to extend the Poor Persons' Defence Act, 1930, procedure; and thirdly there is the legal advice side of the scheme under which it is proposed to extend the Poor Man's Lawyer Centre principle so that there is a really efficient Poor Man's Lawyer service available throughout the length and breadth of the country.

LEGAL AID IN CRIMINAL COURTS

I would like to deal first with legal aid and to dispose immediately of legal aid in the criminal courts. It is proposed there that the administration of the scheme as regards cases coming before courts of criminal jurisdiction shall *not* be in the hands of The Law Society. Instead, the existing machinery will be preserved. There will be legal aid; defence and appeal certificates issued in the same way as they are now; but they will be issued in all classes of cases coming before courts of criminal jurisdiction. The court has to decide whether the means of an applicant who applies for a legal aid certificate are sufficient to enable him to obtain such aid without a certificate or not, and they have to decide whether it appears to be in the interests of justice that he should be given free legal aid. Any doubt on either of those two questions has, by the Bill, to be resolved in favour of the applicant.

The certificates will, as hitherto, be granted by the Bench. Application will be made for them to the clerk to the justices, and it may be made, in future, not only in person but by letter.

The costs will no longer fall on the ratepayer; they will fall on the taxpayer—and it is intended that there shall be the fullest publicity given to this side of the scheme so that any person charged may know of his rights to be legally represented before the courts of criminal jurisdiction.

I would say here that the Council have represented very strongly that it would be in the interests of economy that applicants for any of these certificates in the criminal courts should be required to make a declaration having the effect of a statutory declaration in respect of their means, so that, if any false statement is made in that, the usual penalties may be expected to follow and that there may not be an abuse of procedure which there might otherwise be.

That, at the moment, is all I propose to say on the strictly criminal cases coming before the courts of criminal jurisdiction.

QUASI-CRIMINAL CASES

I have said that legal aid would be available in all cases coming before courts of criminal jurisdiction, and that is quite correct because it will also be granted in quasi-criminal cases, such, for example, as maintenance, bastardy, guardianship of infants—but, in that class of case, the certificates will not be legal aid certificates or defence certificates, but they will be issued under the civil branch of this scheme by the organisation to be set up by The Law Society; they will be civil aid certificates effective for courts of criminal jurisdiction. Therefore, what I have to say on the subject of the legal representation in courts of civil jurisdiction will apply to these quasi-civil cases in the criminal courts.

CIVIL JURISDICTION

As regards civil cases, the Bill itself provides that these civil aid certificates, which are, in a way, comparable with Poor Persons' certificates, shall be issued in respect of proceedings before any of the following courts, which are set out in Part I of the First Schedule to the Bill. They will be in respect of appeals to the House of Lords from any court in England or Northern Ireland, or appeals to the Privy Council, Supreme Court, county court, the Chancery Courts of the Counties Palatine of Lancaster and of Durham, the Mayor's and City of London Court, the Liverpool Court of Passage, the Court of Record for the Hundred of Salford, any court of quarter sessions, and any court of summary jurisdiction. They will also be issuable in proceedings referred by any such court, in whole or in part, to any person for trial. Certificates will also be issued in respect of proceedings before a coroner, and any proceedings before a sheriff under a writ of *elegit* or a writ of inquiry.

PROCEEDINGS

Now, the Government have decided, as a matter of policy—and, I suppose one might say, to avoid what would otherwise become a case of legal spectacles—that certain classes of action should not be included in this scheme, at all events in the beginning, for fear that the machine may become clogged by too many applications. Part II of the First Schedule lists these. They include proceedings for defamation, breach of promise of marriage, the loss of services of a woman or girl from seduction or rape, damages for inducement of a spouse to leave or remain away from another spouse, relator actions, common informer actions, election petitions; and, in the county court, judgment summonses, and proceedings in respect of a debt where the liability for the debt is admitted and the only question to be determined is the time and mode of payment. All those proceedings will be excluded from the Legal Aid Scheme, and including any proceedings which are incidental to any of those just mentioned.

The Lord Chancellor will be empowered by regulation from time to time to add to or bring within the scheme any proceedings he may think fit: provided that he does not add proceedings before a court or tribunal where the legal profession has not a right of audience and provided that he first obtains the authority of both Houses of Parliament to the inclusion of these additional proceedings.

ASSISTED LITIGANTS—QUALIFICATIONS

Now, who are to receive the benefits of this Scheme? They will be known as "assisted litigants," and they will be required to have two qualifications before they will obtain a civil aid certificate. They will have to satisfy a committee of lawyers that they have reasonable grounds for bringing, defending, or being a party to the proceedings; and to satisfy, not a committee of lawyers, but the National Assistance Board, that they are within that section of the community whom this

scheme is designed to assist, viz., in the words of the Bill, "persons with a disposable income not exceeding £420 a year". And there is a proviso that if they have capital in excess of £500 and appear to be able to afford the whole costs of their proceedings without recourse to this scheme then they may be refused legal aid.

I am profoundly glad that the certification of the disposable income and capital of applicants for a civil aid certificate is not the responsibility of the legal profession. The Council have said that they wanted nothing whatever to do with it. It was not a lawyer's function to decide whether or not by reason of his means any particular member of the public came within this scheme. There is no reason why we should provide any member of the public with an opportunity for saying that, having been entrusted with the administration of this great scheme, we are keeping perfectly worthy people out of it. We have said that it is entirely for a non-legal body to determine whether or not any person comes within the scheme by reason of his means, and the body who is to determine that is to be the National Assistance Board. They will be empowered to make regulations which will cover the question of how the income and capital of applicants is to be computed: e.g., what is to be done about people with fluctuating incomes, and whether any particular sum is to be treated as income or capital; but the regulations will provide expressly that the subject-matter of the dispute is not to be deemed to be part of the applicant's own assets.

The figure of £420 which has been fixed as the upper limit of the disposable income is arrived at after deduction from the applicant's gross income of a number of payments. There will first be deducted all payments which by statute are left out of account in determining payments made by the National Assistance Board now: e.g., maternity benefits, sick pay, disability pensions, and things of that description. Secondly, there will be omitted an allowance in respect of each child of the marriage of an equivalent amount to that which is now paid by the National Assistance Board for the maintenance of such a child. And, thirdly, and perhaps most important, there will be deducted from the gross income: income tax; rates; in certain cases, rent; interest on loans; and other commitments which people have to meet; and this means that, at the present standard rate of income tax, there will come within the scope of this scheme persons with a gross income of up to £700 or £750 a year.

Contributions: Liability

Every assisted litigant, after applying for a certificate, and after satisfying the legal committee (to which I shall presently refer) that he has reasonable grounds for bringing or defending proceedings, will have his means assessed, and according to that assessment will be required to contribute or not, as the case may be, towards his own costs. His contribution may be made in one lump sum or, possibly, by instalments. The amount of his contribution out of income will be calculated according to a formula which is extraordinarily difficult to put shortly into words. I will try to explain it.

The assumption will be made by the National Assistance Board that any applicant (man or woman—the Interpretation Act applies) whose disposable income does not exceed £3 a week, £156 per annum, is deemed to be able to afford nothing. Above that figure he will contribute one-half of the difference between that figure and the actual amount assessed as being his disposable income, subject, in the case of a married man, to a wife's allowance of £52 a year. To illustrate that: assuming that a married man applies for a certificate and has a disposable income of £308 a year exclusive of his wife's allowance of £52, his disposable income then becomes £256; if he had had £156, he would have paid nothing—the difference is £100, between £156 and £256—his maximum liability for his own costs is one-half, i.e., £50. If the proceedings are comparatively cheap and the bill is less than £50, he would pay the whole costs himself. If they go on appeal to the House of Lords and the costs rise even to £2,000 or more, he may not be required to pay more than the £50 maximum contribution—any balance will be found by the State.

As regards capital, he will also be required to be assessed and to contribute, if he has capital. There will probably be included under the regulations to be made the recommendations contained in the Rushcliffe Committee's Report, that capital should exclude his furniture and tools of trade and his occupied house. Those will not be reckoned to be part of his capital assets; but the rules will provide that special consideration should be given to the case of a person having, for example, an unencumbered house, or a policy of insurance, or a reversion, upon which money could quite easily be raised—just as there will have to be special consideration given to the case of a person who relies for his livelihood, perhaps wholly or in part, upon income derived from capital. The principle is, as the Rushcliffe Committee said, that a person should not be expected to make a payment towards his own costs if the effect would be materially to diminish an already exiguous income. On the other hand, if there are substantial sums of money available, he should not expect to get his legal representation free of cost to himself and at the expense of the taxpayer.

Applicants will be required to complete a form of application and the Bill provides that any assisted litigant who wilfully fails to comply with the regulations or who supplies false information shall be liable to a fine of one hundred pounds or three months' imprisonment, or both.

The Organisation of the Profession

As regards the organisation of the profession under the scheme, it is proposed that the legal work should be done by solicitors and counsel in general practice, and that there should be a number of panels for different classes of professional business—Supreme Court, Privy Council, and Court of Appeal, other than Divorce; a second panel for divorce work; a third panel for county court work. In respect of the county court panel it will be possible for solicitors to specify named county courts in which they will be prepared to appear; so that the fact that you are on a county court panel will not involve you, if you practise in London, in travelling to, say, Grimsby.

So far as the Bar is concerned, they have rather a separate difficulty over the county court panel, and they propose to divide that panel into three, based on the amount of the claim: one panel for claims up to X pounds; one between X and Y; and a third one exceeding Y. So that a member of the Bar who does not normally expect not to go into court for, say, a fee of less than ten guineas, can, if he likes, go only on the top panel; the young man may go on the bottom one, or middle one, or all three. Otherwise, probably the leaders of the Bar might always be briefed in the county court cases and the young man would probably not come in at all; or, alternatively, the leaders of the Bar would stay off all the county court panels and we should not get the best men who are now doing it giving their services on the panel.

There will be yet another panel for magistrates' courts, and a special panel for London agency work; and I would stress here that the Council very much hope that all solicitors, and particularly the leading practitioners, will go on the panels. But, on the other hand, I want to make it quite clear that it is entirely optional for the profession—either solicitors or counsel—whether they go on or not, as it is optional for the public whether they come within the scheme or not. Where a solicitor does go on the panel, he will go on in his own name but the certificate will be issued in the name of his firm, so that the firm may transact the work exactly as they would if instructed in an ordinary case for any other client. And a solicitor may go on all or any of those panels, and there is no objection whatever to his going on panels in "adjacent areas"—which I shall refer to presently—if he wishes to do so.

The business to be done is all the ordinary work which is performed for litigants for whom a solicitor normally acts. The certificate will cover the work of negotiation and all work done preliminary to proceedings and with a view to a compromise of an action—provided, of course, that the certificate has first been issued.

The special duties of a panel lawyer are not terribly severe. He will be expected not to pick and choose the cases which he is going to accept; he would normally be expected to accept instructions from a panel client, but, if there is good reason to do so, he would be entitled to decline to accept instructions in any specific case.

He will be expected to report to the Committees any change in the client's means, exactly as is now done in the Poor Persons' cases. He will be expected to assist in enforcing orders for payment of costs recovered by panel clients; and to report in due course the result of proceedings taken.

Retirement or Removal

He may at any time retire from a panel if he wishes to do so, subject to the obligation of bringing to a conclusion any pending cases in his hands.

The Bill provides—unfortunately, it has to do so—for the removal of a solicitor or barrister from a panel. It was thought that there might be cases where a member of the legal profession did something perhaps not amounting to professional misconduct but which would be calculated to bring the whole procedure into disrepute, e.g., gross neglect of an assisted client's business; and, in that event, there will be a special inquiry held. So far as solicitors are concerned, it will consist of the President, three members of the Council, and the Lord Chancellor's representative; and so far as the Bar is concerned it will consist of the Chairman of the Bar Council, three members of the Bar Council, and the Lord Chancellor's representative. However, I anticipate that very little, if any, use will be made of that particular procedure. It is there as a precaution and to prevent the scheme being brought into discredit by one isolated practitioner.

Relations between Client, Solicitor and Counsel

Under this scheme it is certainly intended to interfere as little as is really possible with the normal relations which exist between client, solicitor and counsel. The client will be at liberty to select any solicitor he likes, provided he is on the appropriate panel, to act for him. He is also to be at liberty, in the usual way, to choose his own counsel on the panel. The London agent will be selected from among those on the panel, again as is usual, entirely by the solicitor. And, as I have stated, the solicitor may, if he wishes, refuse to accept any particular client—for good reason. There may be excellent reasons: e.g., you may have previously, in your private practice, declined to act further for some particular client, and in that case you would not be expected to act for him under the panel system; or you may have so much panel business that you really cannot take any more, and that again would be a good reason. But you ought not to pick and choose your case and only take up those straightforward easy ones—if there are any!—and return the others.

There are, unfortunately, certain exceptions, which are inevitable, to the ordinary relationship between solicitor and client. First of all,

briefs will be delivered unmarked. The reason for this (to which I shall refer presently) is that counsel's fees will be marked by the taxing officer on the brief at what he regards as being the normal fee for that particular class of case, having regard to the work involved and its complexities; and counsel will be paid in due course a proportion of that fee so marked. A solicitor will not be allowed to take interlocutory appeals, without the consent of the Area Committee—to which I shall presently refer. For an ordinary appeal, a new certificate altogether will be necessary.

Permission must be obtained before two counsel may be briefed in an assisted litigant's case; and no expert witness may be called, or fee fixed, without the permission of the Area Committee. It is really essential that public funds should be preserved, in these classes of cases, so that, for instance, we do not have, say, a number of medical witnesses on one side and the other, all paid at the expense of the State. Provision is therefore made that experts must be approved: the number of these and the fees to be paid must first be approved by the Area Committee—to which I shall presently refer.

Solicitors will be expected to give notice to all other parties in the litigation that the client is an assisted litigant. No payment will be made to solicitors direct by the assisted litigant in any case.

On the other hand, I am glad to be able to tell you that you will not be expected to finance the disbursements out of your own pocket. You will be entitled to receive, from time to time, from the Area Committee, sums on account of disbursements, if you make application for them and the Committee are satisfied that they are reasonably likely to be incurred.

Remuneration of the Profession

The remuneration of the profession will be as follows:—

In the High Court, the profession will be paid disbursements in full, and solicitors will get 85 per cent. of their solicitor-and-client costs as taxed. Counsel will receive 85 per cent. of the fee as marked on the brief by the taxing master.

In the county court, there will be a new scale of charges. The Rushcliffe Committee accepted the evidence given to them that the present scales of county court remuneration were quite inadequate, and they recommended that there should be a new scale which would give reasonable and fair remuneration to practitioners doing county court business—and we are hopeful that the new scale will be a fair one to the profession and will make the work worth doing. The Bill provides that the profession will receive the full scale charge for county court work.

For work in the criminal courts, I am glad to say that it has been conceded that the existing scales are totally inadequate, and, in future, the profession will be remunerated, according to the work they do, on the ordinary basis.

Divorce Work

There are special provisions relating to divorce work.

First of all, preliminary inquiries will have to be made at the expense of the litigant himself: that is to say, all inquiries which have to be made in order to establish a *prima facie* case for a certificate.

Once a certificate is issued, any further necessary inquiries which have to be made in order to complete the case for presentation to court will be paid when the costs are paid in the ordinary way—but those early preliminary inquiries will not be paid for out of the Legal Aid Fund.

The Bill provides that the income of husband and wife shall normally be aggregated; but if there is no reasonable likelihood of a wife recovering more than a small contribution towards her costs then the Committee may, without aggregating the incomes of husband and wife, issue a certificate enabling the wife to proceed on the basis of her own income only. But, if there is a chance of more than a small contribution being made, then the Committee will limit the certificate issued, in the first case, to such proceedings as are necessary to obtain and enforce an order for security for costs.

Finally, it is proposed that the divorce causes of persons who are assessed as being unable to afford more than ten pounds towards their own costs should be undertaken by a Divorce Department of The Law Society—on the lines of the present Services Divorce Department. Now I know, at first sight, that there will be criticism of this provision. It may be said that it is depriving the profession of work which it might legitimately expect to receive. On the other hand, the people who are coming within this limit will be contributing not even enough to pay their own disbursements—they will be contributing nothing towards their profit costs at all. They are, broadly speaking, people for whom, under the present Poor Persons' procedure, the profession has acted not only for nothing, but, in divorce cases, at an average cost to themselves of about £15 a case. So it was felt that, as the profession will now be remunerated for business which has to a large extent been conducted at a loss in the past, it ought to make a contribution towards the Exchequer under this scheme and do the Poor Persons' divorces at as low a cost to the State as can reasonably be secured. That is why this compromise arrangement has been reached whereby the divorces of the very poor will be conducted by the Divorce Department; but, I hasten to add, those cases in which the contribution is more than £10 will, as in all other litigation, be conducted by the solicitors in general practice.

(*To be concluded*)

NOTES OF CASES

COURT OF APPEAL

RENT RESTRICTION: TENANT'S OCCUPATION BY FORMER WIFE

Robson *v.* Headland and Another

Tucker and Cohen, L.JJ., and Birkett, J.
1st November, 1948

Appeal from Brighton County Court (deputy judge).

The plaintiff was the landlord of a flat within the Rent Restriction Acts of which the first defendant was the tenant. During the currency of the tenancy the tenant went to live elsewhere. His wife, the second defendant, continued to live in the flat, and he sometimes visited her. Later she was granted a decree *nisi* against the tenant with the custody of their son, a schoolboy. Due notice to quit was served by the landlord on the tenant, but the wife remained in possession. The landlord accordingly brought an action for possession. The deputy judge refused to make an order, and the landlord now appealed.

Tucker, L.J.—Cohen, L.J., and Birkett, J., agreeing—said that *Skinner* v. *Geary* [1931] 2 K.B. 546, and *Brown* v. *Brash* (1948), 92 Sol. J. 376; 64 T.L.R. 266, clearly established that a tenant who neither personally occupied premises nor had any intention of doing so was excluded from the protection of the Acts. He expressed no opinion on what the position would be if the licensee occupying the premises were at the material time the tenant's wife: it might be necessary to apply some other test, the occupation of the wife being regarded as in law that of her husband. Here the occupant of the flat was not the wife of the tenant, who had no intention of occupying it again. The mere fact that there lived in the flat the tenant's young son, custody of whom had been given to the mother, was not enough to constitute actual residence or occupation by the tenant himself. The landlord was entitled to possession. Appeal allowed.

Appearances: *Jukes* (*Farrer & Co.*, for *Howlett & Clarke*, Brighton); *Dutton Briant* and *Stanley Rees* (*Sharpe, Pritchard and Co.*, for *John Hay*, Brighton).

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

LOST LEASE: SECONDARY EVIDENCE

Barber *v.* Rowe

Tucker and Cohen, L.JJ., and Birkett, J.
3rd November, 1948

Appeal from Birmingham County Court.

The plaintiff's late husband let certain premises for ten years at £52 a year to the defendant by a written agreement dated 10th August, 1936. On expiry of that term the plaintiff gave the tenant notice to quit, but he alleged that he was entitled to renewal of the lease by virtue of another lease executed on 31st March, 1938. That lease was lost, and the only evidence of its contents was the counterpart signed only by the tenant. The plaintiff brought this action, and the tenant gave evidence of having gone with the landlord to a solicitor's office to sign the lease of 1938. That evidence was corroborated by the solicitor concerned. The county court judge admitted the counterpart as secondary evidence of the contents of the lease of 1938, found that the lease had been duly executed and that the option in it had been exercised by the tenant, and decreed specific performance. He also held the lost lease to be a sufficient memorandum in writing to satisfy s. 40 of the Law of Property Act, 1925. The plaintiff appealed. (*Cur. adv. vult.*)

Cohen, L.J., giving the judgment of the court, said that there was evidence entitling the county court judge to find that the lease of 1938 had been signed, sealed and delivered. As for s. 40, the plaintiff argued that, if evidence of this kind could be admitted and the document thus proved be held to satisfy the section, there would be an easy way of escape from the section by swearing that the other party had executed the document and that it was now lost. That argument showed the need for care by the court in such a matter, but did not exclude the ordinary rule of secondary evidence. *Read* v. *Price* [1909] 2 K.B. 724, *per* Lord Cozens Hardy, M.R., at p. 730, showed that it did apply. Were it otherwise, s. 40 might be made an instrument of fraud, because a fraudulent party might destroy the written evidence of a contract and thus make it impossible for the other party to prove it. Appeal dismissed.

Appearances: *R. K. Brown* (*Swepstones*, for *Margetts and Ritchie*, Birmingham); *J. H. Moss* (*Charles H. Wareing*).

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

NEGLIGENCE: UNLIGHTED MOTOR CAR

Henley *v.* Cameron

Tucker, Asquith and Singleton, L.JJ. 22nd November, 1948

Appeal from Henn Collins, J.

The defendant's motor car, having run out of petrol by night, came to rest with the near rear wheel alongside the kerb of the highway and the near front wheel about a foot away from it, the car thus being turned out slightly towards the middle of the road. Some time later, the battery of the car became exhausted and its lights went out. After consultation with police officers, the defendant left the car where it stood, locked and without lights. It would have been possible for the defendant, with the help of the officers, to push the car over the kerb on to the grass verge of the road, or into the mouth of a cart-track some distance away. Later that night a motor cycle combination was found near the car, lying overturned across the road, with its driver dead, the near side of the machine having struck the protruding off-front side of the car. Henn Collins, J., dismissed an action by the plaintiff, the widow of the deceased man, under the Fatal Accident Acts and the Law Reform (Miscellaneous Provisions) Act, 1934. (*Cur. adv. vult.*)

TUCKER, L.J.—SINGLETON, L.J., agreeing—said that to leave the car in that condition, with the alternative courses which were open to the defendant, was negligent. It also constituted a nuisance in that an obstruction was allowed to remain in the road in unreasonable circumstances and for an unreasonable time; the deceased man was also guilty of some negligence in failing to see the car in time, since visibility and the lighting of his motor cycle were normal.

The plaintiff had discharged the burden which lay on her of proving that the defendant's negligence was an effective cause of the accident: an accident had occurred of the kind to obviate which the law required a motor car to show a red light because of the danger inherent in its absence; therefore, it was a natural and reasonable inference that the failure to provide the required light was a cause contributing to the accident. As the deceased man had himself been guilty of some degree of negligence the damages to which the plaintiff was entitled should be on that account reduced by one-third under s. 1 (1) of the Law Reform (Contributory Negligence) Act, 1945.

ASQUITH, L.J., dissenting, said that, in his opinion, the accident was caused solely by the negligence of the deceased man inasmuch as he had the last clear opportunity of avoiding it. The negligence of the defendant continued right up to the moment of impact, since visibility was good and the lighting of the motor cycle normal; but if the deceased man had kept a proper look-out, his headlight would have revealed the obstruction to him in time to avoid it.

Appeal allowed.

APPEARANCES: *J. F. Bourke* (*W. F. Gillham*, for *Harold Grindey*, Stoke-on-Trent); *Sachs*, K.C., and *Gilbert Griffiths* (*Hall, Brydon & Co.*, for *F. H. Woolliscroft*, Stoke-on-Trent).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

COVENANT TO SETTLE AFTER-ACQUIRED PROPERTY: RIGHT OF VOLUNTEER TO ENFORCE

Cannon *v.* Hartley

Romer, J. 19th, 22nd November, 1948

Action for damages for breach of covenant.

The plaintiff, a married woman, was the defendant's daughter. The defendant and his wife executed a separation deed in 1941 containing the usual clauses, and the plaintiff, being then *sui juris*, was also a party. By cl. 7 of the deed the defendant covenanted to settle one-half of any property or money worth more than £1,000 to which he might become entitled from his parents by gift, will or codicil or intestacy upon his wife for life and then to his daughter absolutely. In 1944, on the death of his father, the defendant became entitled in reversion expectant upon his mother's life interest to property worth more than £1,000. The defendant's wife died in 1946. The plaintiff had requested the defendant to settle half this property upon her, but he refused to do so, and she therefore brought this action for breach of covenant.

ROMER, J., delivered a preliminary judgment holding that the property in question, although still a reversionary interest, was caught by the covenant. Having heard further argument, he said it had been contended that the plaintiff, being only a volunteer, was not only unable to enforce the covenant in a court of equity by obtaining a decree for specific performance, but was also precluded from suing at law for damages for breach of covenant. It was well established that a volunteer could not obtain relief peculiar to a court of equity on such a covenant but, the document being under seal, the covenantee's claim for damages should be entertained. The court would in some cases assist persons who were not parties to a settlement to enforce its provisions and covenants (*In re D'Angibau* (1880), 15 Ch. D. 228; see also *In re Plumptre's Marriage Settlement* [1910] 1 Ch. 609). His lordship referred to the judgment of Eve, J., in the latter case. There the next of kin were not parties to, and were outside the consideration of, the settlement, but it was not an authority for the proposition that a covenantee, though a volunteer, could not sue for damages on such a covenant. But the defendant mainly relied on the decision of Eve, J., in *In re Pryce* [1917] 1 Ch. 234 and Simonds, J., in *In re Kay's Settlement* [1939] 1 Ch. 329. Having fully examined these two decisions, his lordship said that in his opinion neither was any authority for the proposition put forward for the defendant. In neither case were the claimants parties to the settlements, nor were they within the consideration of the deeds. Here the plaintiff was a direct covenantee under the very covenant on which she was suing. She was not asking for equitable relief but for damages for breach of covenant, and he would therefore direct an inquiry into the damages sustained by the plaintiff, who would have the costs of the action.

APPEARANCES: *V. M. C. Pennington* (*Gregory, Rowcliffe & Co.*); *A. A. Baden Fuller* (*Hopwood, Mote & Leedham-Green*).

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

DIVISIONAL COURT

MENTAL DEFECTIVE: EXTENSION OF DETENTION ORDERS

R. *v.* Board of Control (Secretary); *ex parte* Abdul Kayum

Lord Goddard, C.J., Humphreys and Byrne, JJ.
19th October, 1948

Appeal from a decision of Slade, J.

On 5th November, 1946, the Secretary of State made an order under s. 9 of the Mental Deficiency Act, 1913, for the detention in a mental institution of one Dawson then in detention under an order of the court. On 6th January, 1948, the Board of Control extended the order under s. 11 (2) of the Act. By s. 11 (1) such an order as that of 5th November, 1946, is to expire a year from its date, unless continued in force under the Act, "Provided that in the case of any institution the Board may by order direct that orders that persons be sent thereto shall, unless continued . . . expire on the quarter day next after the day on which the orders would have expired . . ." In April, 1915, the Board made a general order that the date of expiration of the orders for the detention of all persons detained in certified institutions should be extended to the quarter day next after the day on which the particular order would otherwise have expired. Section 1 (1) of the Mental Deficiency Act, 1938, requires a continuation order under s. 11 (2) of the Act of 1913 to be made within one month after the date on which the detention order would otherwise expire. Slade, J., dismissed an application for a writ of habeas corpus by an interested party, based on the contention that the detention was now unlawful under the relevant statutory provisions because the extension of the 6th January, 1948, was made too late. The applicant now appealed.

LORD GODDARD, C.J., said that the order of April, 1915, was not invalid on the principle that every applicant for a licence was entitled to have his case considered individually, for that principle was not applicable here. The Board was not bound to exercise its discretion under the proviso to s. 11 (1) separately in respect of each institution. It was empowered to make an order in respect of any institution. Therefore it could make an order in respect of every institution. Its power could be exercised by one document: a separate document naming each particular institution was not necessary. Section 11 (1), on its true construction, was not applicable only to persons actually in detention in institutions when the Act of 1913 came into force. The effect of the order of April, 1915, was to make the order of the 5th November, 1946, effective until 25th December, 1947, to which s. 1 (1) of the Act of 1938 added a month—until 25th January, 1948. The extension made on 6th January 1948, was therefore in time. Appeal dismissed.

APPEARANCES: *Heathcote-Williams* and *H. I. Spence* (*Cassavetti, Coustas & Co.*); *Sir Frank Soskice*, K.C. (Solicitor-General), *H. L. Parker* and *Royle* (*The Solicitor, Ministry of Health*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

RENT TRIBUNAL: TENANT TO STATE STANDARD RENT

R. *v.* Croydon Rent Tribunal; *ex parte* Chalkley

Lord Goddard, C.J., Humphreys and Byrne, JJ.
21st October, 1948

Application for an order of certiorari.

The applicant had let a flat in his house to a tenant at a rent of £1 4s. 7d. a week, which included 1s. 7d. a week in respect of services. The flat was within the Rent Restrictions Acts. On an application by the tenant under s. 2 of the Furnished Houses (Rent Control) Act, 1946, the respondent rent tribunal purported to reduce the rent to 17s 6d. a week, though the standard rent of the flat was £1 3s. a week. The landlord accordingly made this application. For the tribunal it was submitted that, while the standard rent was £1 3s. a week, the tenant had failed to inform them what the standard rent was. The court was asked to lay down rules for the guidance of rent tribunals in the ascertainment of standard rent in proceedings of this kind.

LORD GODDARD, C.J., said that, as *R.* v. *Paddington, etc., Rent Tribunal, ex parte Bedrock Investments, Ltd.* (1947), 91 SOL. J. 310; 63 T.L.R. 303, showed, the tribunal had no power to reduce rent to a figure below that of the standard rent. The application therefore succeeded. The court would not lay down rules for procedure in future cases in this matter, for that was the function of the Minister of Health. If the tenant had wanted the rent not to be reduced below the standard rent, he should have told the tribunal what the standard rent was. As he had failed to do so, he should pay his own costs in the present proceedings. Application granted.

APPEARANCES: *Alan Campbell* (*Ellis, Bickersteth & Co.*); *H. L. Parker* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

MOTOR INSURANCE: "SOCIAL AND PLEASURE PURPOSES"

Wood *v.* General Accident Fire and Life Assurance Corporation, Ltd.

Morris, J. 1st November, 1948

Special Case Stated by an arbitrator.

The claimant was driving his employer in the latter's car when a collision occurred in which the employer was injured. The car was insured with the respondents. The employer recovered damages from the claimant in an action against him for negligence. The claimant now sought to be indemnified under the policy, his right to which depended on the car's being used for "social, domestic and pleasure purposes" at the time of the accident. The employer was on his way to interview a firm with the object of negotiating a contract in connection with his garage business. The arbitrator found that travelling by car was a more comfortable, pleasurable, and restful way of making the journey than travelling in a hired car, but held that the journey, being for a business purpose, was not covered by the policy.

MORRIS, J., said that what was to happen at the end of a journey was not necessarily the purpose of the journey, but it might be. It was not reasonable here to say that the journey was for "social, domestic, and pleasure purposes," giving those words their natural, ordinary, normal, and reasonable meaning. The claimant was not entitled to be indemnified and the award would be upheld. Appeal dismissed.

APPEARANCES: *Vick*, K.C., and *Jacob* (*Neil Maclean & Co.*); *Denny* (*Dennes & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RATING: GARAGE ON FARM

Parry *v.* Anglesey Assessment Committee

Lord Goddard, C.J., Hilbery and Birkett, JJ.
25th November, 1948

Case Stated by Anglesey Quarter Sessions.

The appellant, a farmer, used one of the buildings of his farm as a garage for his car. The car was not specially adapted for use on the farm, except that it could draw a trailer, but was used for general farm purposes. It was also used by the farmer for social and domestic purposes in the form of an occasional visit to places of worship or entertainment. The building in question was during one period of every year used to shelter ewes and their lambs, the car at such times being stored elsewhere on the farm. Quarter sessions, upholding a proposal which the assessment committee had accepted—that the rateable value of the farm-house should be increased in respect of the building in question—held that it was not an agricultural building as defined by s. 2 of the Rating and Valuation (Apportionment) Act, 1928, in that it was not a building "occupied together with agricultural land . . . and . . .used solely in connection with agricultural operations thereon," and so was liable to be rated. The farmer appealed.

LORD GODDARD, C.J.—HILBERY and BIRKETT, JJ., agreeing—said that, as quarter sessions had found that the car was partly a private car and partly a farm car it was for them to decide as a matter of fact whether its use for private purposes was so slight as to be disregarded on the principle *de minimis non curat lex*. Their decision that the building which housed a car, a substantial part of the use of which was for social and domestic purposes, was not an "agricultural building" within the meaning of s. 2 of the Act of 1928 was one of fact which could not be disturbed. Appeal dismissed.

APPEARANCES: *Scott Henderson*, K.C., and *Lyon Blease* (*Ellis & Fairbairn*); *Simes*, K.C., and *Roots* (*Whitfield, Byrne and Dean*, for *Gordon Roberts & Co.*, Llangefni).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

FALL OF TREE ON MOTOR-CAR LANDOWNERS' LIABILITY

Caminer and Another *v.* Northern & London Investment Trust, Limited

Lord Goddard, C.J. 26th November, 1948

Action.

While the plaintiffs were driving in their motor car along a road in St. John's Wood, an elm tree on the defendants' land fell on the car and injured them, inflicting injuries in respect of which they brought this action. A strong gusty wind was blowing. The tree was 120 to 130 years old and had for some time been affected with butt rot, a disease which there was nothing in the tree before the fall to indicate. It had a 35-foot crown, not having been trimmed or lopped for many years.

LORD GODDARD, C.J., found that the fall was due to the wind, the disease and the large crown, and said that it was the duty of all owners of property to manage it in accordance with the principles of good estate management, so that it might not be in a condition likely to cause damage to persons lawfully using the highway. If good estate management involved the inspection and trimming of trees from time to time, there was a duty on landowners to carry out those operations. What would amount to an adequate performance of the duty to take precautions with regard to trees adjoining a highway would vary according to circumstances. Here it was a reasonable and proper precaution for the defendants to top or pollard their elm trees as an ordinary incident of good estate management, but they did not realise their duty. The plaintiffs were entitled to recover the agreed damages of £550 and £850, respectively. Judgment for the plaintiffs.

APPEARANCES: *Fox-Andrews*, K.C., and *Rees-Davies* (*G. Howard and Co.*); *Marven Everett* (*Barlow, Lyde & Gilbert*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

DIVORCE: ABSENCE OF DISCRETION STATEMENT

Oakes *v.* Oakes and Atkins

Barnard, J. 29th October, 1948

Husband's petition for divorce on the ground of adultery and wife's cross-petition on the ground of desertion.

Both allegations were found to be made out, though both were denied. The wife did not file a discretion statement.

BARNARD, J., said that he accepted the proposition that the court had power, notwithstanding the denial of adultery, to exercise its discretion in the wife's favour in the absence of a discretion statement. The case put forward by the wife here, however, was very different from that of the husband in the very unusual case of *North* v. *North* [1947] W.N. 287. To exercise discretion in favour of the wife here would be to put a premium on dishonesty and perjury. It would be an encouragement to everyone charged with adultery and himself seeking relief to deny adultery on oath in the first instance, and then, if found guilty, and only then, to ask the court to exercise its discretion in his or her favour. He (his lordship) was unwilling to exercise his discretion in favour of the wife here. Decree *nisi* on the petition.

APPEARANCES: *Malcolm Wright* and *Ormrod* (*W. Timothy Donovan*); *Morgan Gibbon* (*H. C. L. Hanne & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time :—

ADMINSTRATION OF JUSTICE (SCOTLAND) BILL [H.C.] [8th December.

COLONIAL NAVAL DEFENCE BILL [H.L.] [6th December.

To make further provision for the naval defence of overseas territories.

NATIONAL SERVICE (AMENDMENT) BILL [H.C.] [7th December.

PENSIONS APPEAL TRIBUNALS BILL [H.C.] [8th December.

Read Second Time :—

AGRICULTURAL WAGES (SCOTLAND) BILL [H.C.] [7th December.

CIVIL DEFENCE BILL [H.C.] [6th December.

NEW FOREST BILL [H.L.] [9th December.

PRIZE BILL [H.C.] [7th December.

WAGES COUNCILS BILL [H.C.] [8th December.

Read Third Time :—

DUNDEE CORPORATION ORDER CONFIRMATION BILL [H.L.] [9th December.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to Dundee Corporation.

DUNDEE HARBOUR AND TAY FERRIES ORDER CONFIRMATION BILL [H.L.] [9th December.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to Dundee Harbour and Tay Ferries.

JUDGES PENSIONS (INDIA AND BURMA) BILL [H.C.] [9th December.

RECALL OF ARMY AND AIR FORCE PENSIONERS BILL [H.C.] [9th December.

STORNOWAY HARBOUR ORDER CONFIRMATION BILL [H.C.] [9th December.

HOUSE OF COMMONS

Read Second Time :—

RAILWAY AND CANAL COMMISSION (ABOLITION) BILL [H.L.] [7th December.

QUESTIONS TO MINISTERS

LEGITIMACY ACT, 1926 (AMENDMENT)

Mr. JANNER asked the Secretary of State for the Home Department whether he is prepared to introduce a Bill to amend the Legitimacy Act, 1926, in order to legitimise the birth of children of parents who have gone through a form of marriage which is later annulled on the grounds that the marriage was null and void.

Mr. EDE : I am considering this matter in consultation with my right hon. and learned friend the Attorney-General. [9th December.

ARTIFICIAL INSEMINATION (ROYAL COMMISSION)

Mr. DRIBERG asked the Prime Minister if he will consider the appointment of a Royal Commission to examine the social and legal implications of the practice of human artificial insemination, including A.I.(D.), with special reference to the problems of legitimacy and inheritance involved ; or extend the terms of reference of the Royal Commission on Population to include this subject.

The PRIME MINISTER : I should prefer first to see the general Report of the Royal Commission on Population, which I understand is in the final stages of drafting. [7th December.

WAR DAMAGE (BUSINESS SCHEME)

Mr. AWBERY asked the President of the Board of Trade if he is now in a position to give the date when the general payment of agreed claims of the Business Scheme under the War Damage Act, 1943, Part II, will be made.

Mr. BOTTOMLEY (Secretary for Overseas Trade) : I regret that it is not yet possible to announce the date of the general payment of claims under the Business Scheme, but it is open to claimants to apply for early payment on the ground that the replacement or repair of the goods is expedient in the public interest or to avoid undue hardship, and such applications are sympathetically dealt with. [7th December.

TAXICABS, LONDON (HIRE REGULATIONS)

Mr. NORMAN BOWER asked the Secretary of State for the Home Department if his attention has been drawn to the recent decision of the Divisional Court in the case of *Hunt* v. *Morgan* [see p. 710, *ante*], relating to the legal position of taxicabs plying for hire, and the intimation by the court that a change in the present law is desirable ; and if he will introduce legislation for this purpose.

Mr. EDE : I am informed that in the Metropolitan Police district the police have always acted on the view of the law which has been established by the recent High Court decision. The question of amending and consolidating the statutes dealing with London cabs is one which I have noted for consideration at a convenient opportunity but, in the present state of Parliamentary business, I fear I can hold out no hope of early action. [9th December.

RECENT LEGISLATION

STATUTORY INSTRUMENTS 1948

No. 2608. **Control of Engagement** (Amendment) Order, 1948. 1st December.

No. 2628. **Exchange Control** (Payments) (Italy, Republic of San Marino and Trieste) Order, 1948. 3rd December.

DRAFT STATUTORY INSTRUMENTS 1948

Double Taxation Relief(Estate Duty) (Netherlands) Order, 1948.

Double Taxation Relief (Taxes on Income) (Barbados) Order, 1948.

Double Taxation Relief (Taxes on Income) (Dominica) Order, 1948.

Double Taxation Relief (Taxes on Income) (Falkland Islands) Order, 1948.

Double Taxation Relief (Taxes on Income) (Grenada) Order, 1948.

Double Taxation Relief (Taxes on Income) (Jamaica) Order, 1948.

Double Taxation Relief (Taxes on Income) (Netherlands) Order, 1948.

Double Taxation Relief (Taxes on Income) (St. Lucia) Order, 1948.

Double Taxation Relief (Taxes on Income) (St. Vincent) Order, 1948.

[The above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, W.C.2.]

TO-DAY AND YESTERDAY

LOOKING BACK

IN November, 1786, a Mr. Robinson, while walking through Smart's Buildings in Holborn with a friend named Hunt, felt a hand in his pocket. He tackled the thug and his friend collared an accomplice but they were immediately set upon by a gang of young ruffians with whom they struggled till help came up and their assailants ran off. Mr. Robinson had been slashed across the eyes and nose and stabbed in several places, the gang shouting to each other, " Damn the rascal ! Cut his heart out ! " and " they were so intent upon this that one of the buttons on his breast was cut through and his coat ripped more than eighteen inches in length. Mr. Hunt was also wounded, though not in a degree to cause danger to his life ; but Mr. Robinson was carried home in a mangled condition with little hope of his recovery." Three of the members of the gang were soon arrested : Michael Walker, Richard Payne and Robert Cox, who was not quite fifteen. All were identified by their victims. Soon afterwards Robinson died of his injuries. The three lads were all tried, convicted and condemned to death. A temporary gibbet was put up for them opposite Smart's Buildings and there they were hanged on 18th December. " Walker was greatly affected at his fate and held a book in his hand. Payne appeared in a state of stupidity. Cox, the boy, cried bitterly and, when he came within sight of the gallows he screamed and was in a state of distraction when turned off."

SERJEANTS' INN

IN May, 1941, during the great bombardments, Serjeants' Inn in Fleet Street was totally destroyed. Once before, in the Great Fire, the ancient home of the Order of the Coif had perished in flames, but had risen again in pleasant, mellow red brick. In 1730 the serjeants from this Inn migrated to join their brethren in the other Serjeants' Inn in Chancery Lane. Soon afterwards the Hall and Chapel were demolished to make way for a handsome stone building in the classical style by Adams. (Later it was numbered 13.) Its last occupants were the Incorporated Council of Law Reporting, for it was in their time that it was burnt by the enemy. It is to be hoped that when rebuilding comes the spirit of the pleasant, restful architecture of the old Inn will be retained. Already there is a stirring and it is announced that the site of No. 9 has been purchased by the Colonial and Continental Church Society. Even after it passed out of the

hands of the serjeants the Inn retained its attraction for the lawyers. Thomas Noon Talfourd, the literary barrister who was afterwards a judge, the friend of Lamb and Dickens, was a resident. The eccentric Serjeant Ballantine lived there as a child, first at No. 1 and then at No. 6, while his father was practising at the Bar. In after years he remembered perfectly returning by coach from Huntingdonshire and "being deposited in a dull dreary home, which I now know was No. 1 Serjeants' Inn." Among the other residents were Serjeant Wilde, afterwards Lord Chancellor Truro and Frederick Pollock, afterwards Chief Baron of the Exchequer. At No. 6, from 1749 till his death there in 1797, lived Thomas Coventry, one of Lamb's old Benchers of the Inner Temple. It was "a gloomy house opposite the pump" and there he might be seen almost all the year round "standing at his window in this damp, close, well-like mansion to watch, as he said, the maids drawing water all day long." No doubt it was the contrast with the charm of the adjoining Temple that made the houses of this little Inn seem unattractive to Lamb and Ballantine. Subsequently vagaries of architecture sweeping through London made it seem a very pleasant haven.

JACOB HOMNIUM'S HOSS

The Times recently reprinted part of a letter sent just a century ago to the editor. It was signed "J. Omnium" and it dealt with the abuses of the Palace Court, a curious anachronism which sat in Great Scotland Yard, and exercised a particularly oppressive debt-collecting jurisdiction over a radius of twelve miles. Four counsel and six attorneys enjoyed by purchase the monopoly of the practice there and the costs were so enormous as to constitute it a very effective engine of legal blackmail. The letter called it "an instrument of extortion, a web spun for the benefit of a few fat legal spiders." The writer was Mr. Matthew James Higgins, a wealthy man with considerable estates in Ireland and Jamaica, who already in early Press controversies had made a notable stir under the pseudonym "Jacob Omnium." His experiences in the Palace Court as unsuccessful defendant in a thoroughly unmeritorious action by a livery-stable keeper for the board and lodging of his horse, placed there without his authority, while in the possession of a thief, provided him with such effective material for effective denunciation that the interest of the public and even of Parliament was aroused. By s. 13 of the Statute 12 & 13 Vict., c. 101, the court was condemned to die. The case of Jacob Omnium was its last unpardonable sin and inspired Thackeray, in the pages of *Punch*, to one of his best satirical efforts, the verses on "Jacob Homnium's Hoss—a new Palace Court Chaunt."

NOTES AND NEWS

Honours and Appointments

The King has approved that Mr. LINTON THEODORE THORP, K.C., shall act as Commissioner of Assize at Lewes.

The King has approved the appointment of Mr. B. E. NIELD, K.C., M.P., as Recorder of Salford in succession to Mr. A. D. Gerrard, K.C., who has been appointed Judge of the Salford Hundred Court of Record.

The King has approved the appointment of Mr. MALCOLM MCGOUGAN as Recorder of Andover in succession to Mr. William Thomas Snell, who has resigned. Mr. McGougan was called to the Bar by the Inner Temple in 1929 and practises on the Western Circuit.

Mr. G. R. PALING, Assistant Director of Public Prosecutions, has been appointed Deputy Director in the place of Mr. L. N. Vincent Evans, who is due to retire on 31st December. Mr. H. A. K. MORGAN, senior legal assistant to the Director of Public Prosecutions, has been appointed an Assistant Director. Both appointments will take effect on 1st January.

Mr. P. R. BOYD, of Dublin, has been elected President of the Incorporated Law Society of Ireland, and Mr. J. P. TYRRELL, of Bray, and Mr. JOSEPH BARRETT, of Dublin, Vice-Presidents.

Notes

Her Majesty the Queen honoured the Treasurer and other Masters of the Bench with her presence at dinner at the Middle Temple on the evening of 9th December.

The well-known Leeds solicitor, Ald. A. E. Masser, who, during fifty years as a solicitor, has represented over 100,000 clients, was congratulated at Leeds City Court on 9th December on completing his half-century in the legal profession by the Leeds tipendiary, Mr. Ronald Sykes, Mr. Louis Godlove (on behalf of the solicitors), and Mr. J. W. Barnett (Chief Constable of Leeds).

At the recent Intermediate Examination of The Law Society the following candidates were placed in the first class: Arthur John Gardner, Margar t Hibbert Holden, Maurice Anthony Paton and Reginald William James Tridgell. Ten candidates were successful in both parts of the examination, 101 candidates passed the Law portion only, and one candidate passed the Trust Accounts and Book-keeping portion only.

RESTITUTION OF PROPERTY

The Foreign Office has recently made the following announcements with regard to claims for restitution of property:—

(1) Claims relating to property seized in Austria since 13th March, 1938, in connection with the National-Socialist assumption of power, must be filed with the competent Special Tribunal in Austria *by 30th December*, 1948. Where the address of the appropriate Special Tribunal is not known, claims should be addressed to: The Federal Ministry for Property Control and Economic Planning, Ballhausplatz 1, Vienna 1, Austria.

(2) Claims for the restitution of identifiable property in the United States Zone of Germany must be filed with the Zentralanmeldeamt, Bad Nauheim, Germany, *on or before* 31*st December*, 1948. Regulation No. 1 to U.S. Military Government Law, No. 59 (a few copies of which can be obtained from the Foreign Office (German Section) Norfolk House, St. James's Square, S.W.1), details the procedure. Claimants who are unable to obtain this regulation should file a written petition (which need not be under oath) describing the confiscated property and stating as exactly as possible the time, place and circumstances of the confiscation and the names and addresses of all persons known by the claimant to have, or claim to have, an interest in the property. Lack of complete information will not debar claimants from filing a claim.

(3) Claims under General Order No. 10 for the restitution of securities and currencies in the British Zone of Germany must be filed *on or before* 31*st December*, 1948. Claims, in triplicate, on form MGAF/C (obtainable from the Foreign Office (German Section), Norfolk House, St. James's Square, London, S.W.1) should be forwarded to: Das Zentralamt für Vermögensverwaltung (Britische Zone), Bad Nenndorf, Land Niedersachsen, Germany.

"Securities" include stocks, shares, mortgage bonds and other bonds, whether expressed in German or non-German currency and whether issued in Germany or elsewhere. "Currencies" include coins and other monetary symbols but not bank balances.

COURT PAPERS

SUPREME COURT OF JUDICATURE

MICHAELMAS SITTINGS, 1948

COURT OF APPEAL AND HIGH COURT OF JUSTICE CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON GROUP A

Date	Emergency Rota	Appeal Court I	Mr. Justice Vaisey *Business as listed*	Mr. Justice Roxburgh *Witness*
Mon., Dec. 20	Mr. Jones	Mr. Adams	Mr. Andrews	Mr. Adams
Tues., ,, 21	Reader	Andrews	Jones	Andrews
Wed., ,, 22	Hay	Jones	Reader	Jones
Thurs., ,, 23	Farr	Reader	Hay	Reader

Date	Group A: Mr. Justice Wynn Parry *Non-Witness*	Group A: Mr. Justice Romer *Witness*	Group B: Mr. Justice Jenkins *Non-Witness*	Group B: Mr. Justice Harman *Business as listed*
Mon., Dec. 20	Mr. Farr	Mr. Jones	Mr. Reader	Mr. Hay
Tues., ,, 21	Adams	Reader	Hay	Farr
Wed., ,, 22	Andrews	Hay	Farr	Adams
Thurs., ,, 23	Jones	Farr	Adams	Andrews

The Christmas Vacation will commence on Friday, the 24th day of December, 1948, and terminate on Thursday, the 6th day of January, 1949, both days inclusive.

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